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International Business Machines Corporation

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December 8, 1997

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DEC 8 - 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: Ex Parte contact in CC Docket No. 96-45

Dear Ms. Salas:

On December 8, 1997, I met with Mr. Paul Gallant, Legal Advisor to Commissioner Tristani, to discuss the points contained in the attached document, which has been previously filed with the Commission. An original and one copy of this letter and the attachment are submitted in accordance with the Commission's rules.

Sincerely,



Steven W. Stewart  
Program Manager, Telecommunications Policy

Attachment

cc: Mr. Paul Gallant (w/o attachment)

041

Ex Parte Submission of the Ad Hoc Telecommunications Users Group, EDS Corporation, the Information Technology Association of America, and International Business Machines Corporation, CC Docket 96-45

**THE COMMISSION SHOULD RECONSIDER ITS DECISION  
TO IMPOSE UNIVERSAL SERVICE PAYMENT OBLIGATIONS  
ON SYSTEMS INTEGRATORS**

**SYSTEMS INTEGRATORS PROVIDE MANAGED DATA PROCESSING AND  
INFORMATION SERVICE PACKAGES; ANY TELECOMMUNICATIONS IS AN  
INCIDENTAL PART OF THEIR INTEGRATED OFFERINGS**

Systems integrators are providers of managed data processing and information services packages that may include network design and management, information and enhanced services, computers and customer premises equipment, data processing, and software applications. Systems integrators may provide telecommunications to third parties: (1) as an incidental part of their integrated offering, and not on a stand-alone basis; (2) over facilities provided by common carriers; and (3) pursuant to individually negotiated private contracts.

**THE PRINCIPLE OF "COMPETITIVE NEUTRALITY" DOES NOT REQUIRE THAT  
SYSTEMS INTEGRATORS MAKE DIRECT PAYMENTS TO THE USF**

The Commission's concern about competitive neutrality is not applicable to systems integrators because systems integrators do not compete against providers of stand-alone telecommunications services. In antitrust terms, "systems integration" and "telecommunications" services are not in the same relevant market. Customers do not view systems integration services as a substitute for telecommunications. See Department of Justice-Federal Trade Commission Merger Guidelines § 1.11. Indeed, it would not be economically rational for a customer to contract with a systems integrator solely to obtain telecommunications. Consequently, neither telecommunication providers nor systems integrators "base business decisions on the prospect of buyer substitution between [these services] in response to changes in price or other competitive variables." Id.

**SYSTEMS INTEGRATORS CAN BE READILY DIFFERENTIATED FROM OTHER  
ENTITIES THAT WILL MAKE DIRECT PAYMENTS TO THE USF**

Systems integrators can be readily differentiated from other entities who will be required to make direct payments to the USF. Unlike telephone companies, systems integrators do not own telecommunications facilities. And, unlike resellers, they are not common carriers. Rather, systems integrators are a type of enhanced service providers. The fact that these operators provide incidental telecommunications as an incidental part of their integrated offering does not alter the enhanced status of the entire offering. See Amendment to Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase II Reconsideration Order, 3 FCC Rcd 1150, 1170 n.23 (1988) (subsequent history omitted). Under the Telecommunications Act, firms may not be required to contribute based on revenues from enhanced services.

**THIS PROPOSAL WOULD NOT REDUCE THE SIZE OF THE USF, AND WOULD HAVE VIRTUALLY NO IMPACT ON THE SIZE OF CARRIERS' USF PAYMENTS**

The size of the USF will remain the same. Moreover, eliminating the requirement that systems integrators make direct payments to the USF would have almost no impact on the size of the carriers' USF payments. While precise data is not available, we estimate that carrier contributions would increase by no more than one-quarter of one percent. At the same time, systems integrators will make significant contributions to universal service through the rates they pay to the facilities-based carriers from which they obtain service.